IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 33219 of 2007(D)

PETITIONER:

P.A.JOJO, S/O ANTONY,
PULLANIKKAYIL HOUSE, CLERK,
K.S.R.T.C. NEAR PARAVANTHALA SREE SUBRAMANIA TEMPLE, P.O. NUT STREET, VATAKARA.

BY ADV. SRI.PULIKKOOL ABUBACKER
SRI.ZUBAIR PULIKKOOL

RESPONDENTS:
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1. SOUTH MALABAR GRAMIN BANK,
REPRESENTED BY MANAGER,
VATAKARA BRANCH.

2. BABILJITH, S/O RAVEENDRAN,
NERIYANANPURATH HOUSE,
KURINHALIYODE P.O., VATAKARA TALUK,
KOZHIKODE.

BY ADV. SRI. T.R. RAVI SC FOR R1

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.33219 OF 2007

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Dated this the 12th day of November 2007

JUDGMENT

This writ petition is preferred by the 2nd defendant in the suit against the order of arrest. The decree holder bank moved the execution petition for realisation of the amount even without the junction of the principal borrower. Judgment debtors 1 and 2 filed a counter raising the plea of no means. But, later they did not prosecute the matter. The court, on appreciation of the evidence of PW1 in the form of affidavit, exonerated the first judgment debtor holding that there is no evidence and ordered arrest against the 2nd judgment debtor. It is against that decision, the present execution petition is filed.

2. Heard counsel on both sides. I feel that the approach of the bank is not fair for the reason that they have not even chosen to implead the principal judgment debtor, who had enjoyed the benefit of the loan. I am conscious of the fact that the liability of the surety is co-extensive with that of the principal debtor and the bank is legally entitled to proceed against the sureties. But, the bank should also think of getting the amount from the

person, who had enjoyed the benefits. Similarly, the 2nd respondent also should be heard before committing him to civil prison, though there are laches on his part.

Therefore, the order under challenge is set aside and the matter is remitted back to the executing court with a direction to permit the petitioner to adduce evidence in support of his contention. Needless to say that the bank is also at liberty to adduce fresh evidence. Parties are directed to appear before the executing court on 12.12.207.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-